

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRED KNOX,

Plaintiff,

v.

JOHN POTTER, et al.,

Defendants,

No. C-03-3638 MMC

**ORDER GRANTING
DEFENDANTS' MOTION
TO DISMISS; VACATING
HEARING**

(Docket Nos. 5, 10)

Before the Court is the motion to dismiss, filed initially on January 23, 2004 and refiled March 10, 2004, by defendants Postmaster General John Potter ("Postmaster General Potter"), Rich Lena ("Lena"), and Virginia Labson ("Labson"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.¹ No opposition has been filed.² Having considered the papers filed in

¹ Defendant Guy Ono ("Ono") has not joined in the motion, and there is no indication in the record that he has been served.

² At the Case Management Conference held April 2, 2004, the Court set the motion for hearing on May 21, 2004. Pursuant to the Civil Local Rules of this District,

A. Knox I

On March 2, 1998, Knox filed suit in the Northern District of California, Case No. 98-0796 CRB ("Knox I"), against defendants Postmaster General Marvin Runyon, USPS Manager Rich Lena ("Lena"), USPS Supervisor Bob Long ("Long"), USPS Personnel Assistant Susy Nakai ("Nakai"), USPS Supervisor Tom Nesbitt ("Nesbitt"), USPS Computer Systems Administrator Dennis Williams ("Williams"), USPS Manager Cele Gutierrez ("Gutierrez"), USPS Supervisor Roger Hisle ("Hisle"), the USPS, USPS employee Charlie Wambeke ("Wambeke"), in his capacity as a representative for American Postal Workers Union AFL-CIO Local 6669 ("the Union"), and Equal Employment Opportunity Commission ("EEOC") Administrative Law Judge

Knox to be a vexatious litigant. Sections A through E of this background section are taken from that order.

4 Knox I contains both a four-page form employment discrimination complaint and a seventeen-page "Complaint for Damages." All references are to the

Jeanne Player ("ALJ Player"). 4 (See Knox I at 1;7:8-14.)

The caption of the Knox I complaint lists the following causes of action: "Discrimination in Employment; Racial; Retaliation; Unfair Labor Practices; Breach of Contract; Intentional Infliction of Emotional Distress; Negligent Infliction of Emotional Distress; Veteranance Preference Denied." (See id at 1.) The gravamen of Knox I is that the USPS and the Union discriminated against Knox on the basis of his race. (See id. at 2:2-4; 2:7-8; 2:25; 3:7-19; 9:19-23; 1:3-7; 12:2-7; 12:24-26; 13:1.) Knox alleges that this discrimination occurred between May 1994 and January 23, 1998. (See Knox I form Employment Discrimination Complaint 7.)

The Knox I complaint contains numerous factual allegations. First, Knox alleges that he was denied promotions and training on the basis of his race. (See seventeen-page "Complaint for Damages" unless otherwise noted.

Knox I at 2:7-25; 3:23-26; 4:1-15; 8:19-26; 9:1-17.)

Knox further alleges that the defendants colluded and conspired to deny him promotions and training on the basis of his race, (see id. at 9:19-23), and violated 42 U.S.C. 1981, 1985(2), 1986, 2000e and 29 U.S.C. 158(b). (See id. at 9:25-27; 10:1-4.) Throughout the complaint, Knox repeatedly "claims" veterans preference, without further explanation, pursuant to "Veterance Preference Act Pub. L. 103-353, 2(a), Oct. 13, 1994, 108 Stat. 3153, 3166 Subchapter II Section 4311. Para (a), (b), (c), (1) (2) And Subchapter III Section 4324 (d), (1), (2)." (See id. at 8:22-24.)

Second, Knox alleges that he was injured in a "Halon Chemical Explosion" on May 31, 1995 and thereafter filed a workers' compensation claim. (See Knox I at 3:1-3.) Knox alleges that USPS Manager Lena was enraged by Knox's claim and called Knox a "[s]illy [n]igger." (See id. at 3:7-9.) Knox further alleges that USPS Supervisor

Long and Manager Lena read Knox' wokers' compensation claim aloud to his co-workers and theraby created a hostile work environment because Knox, inter alia, was stalked at work by unidentified persons, was followed home by unidentified persons, unidentified co-workers used a machine to blow dust in his face, and his property was vandalized by unidentified persons. (See id. at 3:9-19.)

Third, Knox alleges that following the Halon explosion, USPS Manager Gutierrez ordered Knox to attend three separate medical examinations and instructed the physicians to examine Knox's genital area. (See id. at 4:17--26; 5:1-19.) Knox then states without further explanation, that he "charged Manager Cele Gutierrez with Sex Harassment, Retaliation, and Personal Discrimination and abusive authority." (See id. at 5:17-19.)

Fourth, Knox alleges that he was denied higher pay

while performing higher level duties than he was required to perform. (See id. at 4:9-11; 5:26; 6:1; 8:14-17.) He also alleges that he was denied overtime work that was instead given to female employees because they had "high mortgages to pay." (See id. at 5:26; 6:1-4.)

Fifth, Knox alleges that he was forced to work in unsafe working conditions. (See id. at 6:14-17, 19-22.)

Sixth, Knox alleges defendants failed to investigate his disparate treatment claims (see id. at 10:19-21), that he was subjected to systematic harassment at work, (see id. at 10:23-26), and that he was retaliated against on the basis of his race and because he complained about his treatment as a black employee. (See id. at 10:23-26; 11:1-17.) Knox again alleges that these actions were in violation of 42 U.S.C. 1981, 1985(2), 1986, 2000e and 29 U.S.C. 158(b). (See id. at 11:18-20.)